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IN THE

Supreme Court of the United States

October Term, 1962.

No. 453

PETITION OF THE COMMITTEE OF CENSORS OF THE PHILADELPHIA BAR ASSOCIATION IN RE: HARRY J. ALKER, JR.

Harry J. Alker, Jr.,

Petitioner.

PETITION FOR ALLOWANCE OF WRIT OF CERTIORARI BY HARRY J. ALKER, JR.

To Review the Judgment of the United States Court of Appeals, Third Circuit, at No. 13,900, Affirming the Judgment of the United States District Court for the Eastern District of Pennsylvania at Misc. No. M-2060.

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HARRY J. ALKER, JR.,

Petitioner.

PETITION FOR ALLOWANCE OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Harry J. Alker, Jr., petitioner herein, hereby respectfully prays that a Writ of Certiorari be issued from your Honorable Court to review the judgment of the United States Court of Appeals for the Third Circuit, entered June 26, 1962, affirming disbarment decrees of the United States District Court for the Eastern District of Pennsylvania, and, in support hereof, he respectfully submits the following data:

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Third Circuit, per curiam (McLaughlin, Staley, and Hastie, CJJ), filed June 26, 1962 (*infra*, p. 21), has not been reported.

The opinions of the United States District Court for the Eastern District of Pennsylvania (appendix to Brief in USCA, below, pp. 4a to 15a), have not yet been reported.

JURISDICTION.

(i) The judgment of the learned U. S. Court of Appeals, Third Circuit, was entered on June 26, 1962.

(ii) Petition for re-hearing therein was denied by the learned U. S. Court of Appeals, Third Circuit, on August 6, 1962.

(iii) The statutory provision conferring jurisdiction on your Honorable Supreme Court to review said judgment by Certiorari is that contained in the Act of Congress, June 25, 1948, c. 646, 62 Stat. 928, reading as follows:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of Certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree; . . . ." (28 U. S. C. A. 1254-1)

QUESTIONS PRESENTED FOR REVIEW.

I. Where a civil Federal disbarment of an attorney is sought by censors, and *heard below without any adverse testimony,* then decreed below solely on the basis of a prior state-court disbarment, *similarly granted therein without any adverse testimony,* but predicated exclusively upon *erroneous and unfounded inferences* drawn from the *mere hearsay records* of divers other *incompetent* and *inadmissible* "criminal" cases and *without any testimonial hearing* or other probative evidence whatever, is there not truly *"such infirmity of proof* as to facts found to have established want of fair professional character", and such *"lack of due process of law"* as will vitiate both the state-court disbarment and the Federal disbarment based thereon?

(*Answered: "No!", by the Courts below.*)

II. Where a responding attorney's Answer to censors' petition for Federal disbarment, based solely on a prior state-court disbarment, and his petition to vacate the subsequent Federal disbarment predicated exclusively thereon, both *aver and show* that said prior State disbarment "lacks due process" for *failure of any testimonial hearing,* is *tainted* with *infirmity of proof* because *devoid of any adverse testimony,* and moreover, has since been minimized and nullified by facts and circumstances occurring subsequent thereto, are not these later material changes in the bases of the state-court disbarment *"such grave reasons of right and justice"* for disregarding said prior State ouster as cogently require independent and separate Federal hearings with opportunity for defense?

(*Answered: "No!", by the Courts below.*)

STATUTES INVOLVED.

These questions involve the correct and definitive interpretation of Rule #8 of this Honorable Court, covering disbarment of attorneys, Rule #8(3) of the U. S. Court of Appeals, Third Circuit, and like rules of the U. S. District Court for the Eastern District of Pennsylvania, similarly affecting attorneys at law, all of which were adopted pursuant to Act of Congress, amended May 24, 1949, c. 139, sec. #102, 63 Stat. 104, reading thus:

> "The Supreme Court and all other courts established by Acts of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court." (28 U. S. C. #2071)

Likewise involved are those portions of the 5th and 14th Amendments to the Constitution of the United States, providing respectively: "No person shall be * * * deprived of life, liberty, or property, without due process of law", and "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE.

On March 30, 1959, the United States District Court below entered against defendant-appellant a "Rule to Show Cause Why He Should Not Be Disciplined," and directed said defendant to appear for "a further hearing" in said Court on May 11, 1959. Said rule was allowed on a "Petition for Discipline" filed by the Committee of Censors of the Philadelphia Bar Association.

On May 20, 1959, defendant-appellant filed an Answer to said petition and New Matter. On May 11, 1959, the

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petitioner, Committee of Censors, offered in evidence the complete record of defendant's disbarment by the Orphans' Court of Philadelphia, and rested. Defendant was present, but *no testimony of any kind was taken at this alleged hearing,* the Court merely granting defense counsel ten (10) days within which to make application to offer "any additional testimony" (N. T. p. 14). Hence, no real *hearing* was given on this date.

On May 22, 1959, with the defendant incarcerated and *not present,* the second alleged "hearing" below was held. It, too, consisted solely of colloquies between the Court and counsel. No testimony of any kind was taken at this "alleged hearing."

On December 14, 1960, with defendant released from custody and now present, a third "alleged hearing" was held below. This likewise consisted only of a series of oral discussions between Court and counsel. *No testimony* of any kind was taken on behalf of the petitioner, Committee of Censors, and *defendant-appellant was not then, or thereafter, permitted to offer any testimony or any explanatory evidence* in exculpation of the charges or in extenuation of the offenses and in mitigation of the penalty.

On May 25, 1961, the learned U. S. District Court below (without, as shown, any testimonial or evidential hearings whatever), solely on the basis of the Pennsylvania State-Court disbarment, disbarred defendant-appellant and struck his name from its roll of qualified attorneys.

On June 23, 1961, within thirty days of its disbarment decree, the learned Court below entered a Rule upon petitioner, Committee of Censors, to show cause why said disbarment decree of May 25, 1961, should not be vacated and defendant, Alker, "be granted a hearing in the matter; * * * all proceedings in the matter to stay."

During the summer recess of 1961, nothing occurred. On September 25, 1961, defendant again petitioned and prayed for a full hearing.

On September 29, 1961, and again on October 6, 1961, the learned Court below, with defendant present but not represented by counsel, who were unavailable, held additional "purported hearings" thereon, eventually calling merely for briefs to be submitted. *No testimony or other evidence,* either to support the Censors' petition for discipline or to defend the accused by way of exoneration, extenuation, or mitigation was allowed, received or heard at any of said "alleged hearings."

On October 23, 1961, with the record below devoid of any admissible testimony either to sustain the disbarment or to exculpate defendant or alleviate the State-Court ouster by showing the changed circumstances thereafter occurring to minimize or repudiate said State action, the learned Court below denied defendant's petitions for a hearing in the U. S. District Court, and let its prior disbarment stand.

On June 26, 1962, the learned U. S. Court of Appeals, Third Circuit, despite the recorded admissions of the Bar's Censors that there was no adverse testimony in either the State-Court action or the U. S. District Court proceedings, but only other criminal records (i.e., inadmissible hearsay), affirmed the Federal disbarment, and on August 6, 1962, denied a re-hearing thereof in the court below.

BASES OF FEDERAL JURISDICTION.

Federal jurisdiction below derives also from the Act of Congress, as amended May 24, 1949, c. 139, sec. #102, 63 Stat. 104 (28 U. S. C. #2071), previously quoted herein, and the respective Rules of the District Court of the United States for the Eastern District of Pennsylvania, and of the United States Court of Appeals, Third Circuit, relative to the disbarment of attorneys, severally adopted in pursuance of said statutory authority also (28 U. S. C. A. 1).

REASONS FOR ALLOWANCE OF WRIT, AND ARGUMENT.

I. The Learned Courts Below Have Decided an Important Federal Question: the Disbarment of a Member of the Bar of This Honorable Court, and of the Lower Federal Courts, in a Way That Conflicts With the Applicable Controlling Decisions of This Court.

The learned courts below, as well as both parties hereto, agree that the applicable controlling decision governing Federal disbarments, based upon prior state-court disbarments, is the case of *Selling v. Radford*, 243 U. S. 46, 37 S. Ct. 377, 378, 61 Law Ed. 585, in which it was *held* that state-court disbarment decrees were entitled to respectful recognition and would be followed by our Federal courts unless:

> "(1) The state procedure *from want of* notice or *opportunity to be heard* was *lacking in due process of law;* or
>
> (2) There was *such an infirmity of proof* as to facts found to have established the want of a fair private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion thereon, or
>
> (3) Some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with *the duty* * * * *not to disbar* except upon the conviction that, under principles of right and justice, we were constrained to do so."

Apropos of item #1, above-stated, the *absence of any testimonial hearing* in the Orphans' Court of Philadelphia

prior to the state-court disbarment of this petitioner was specifically called to the attention of the United States District Court below and *was blandly admitted* by Mr. Reath, counsel for the Censors (p. 82 of the certified Record, and p. 8 of Brief below). As previously shown in the "Statement of the Case", *supra,* the alleged hearings in the United States District Court below were mere colloquies between judges of the Court and the petitioner, Alker, or his counsel, Mr. Woolston. For example, Van Dusen, J., assumed there would be merely *"some short testimony"* from Mr. Alker (R., p. 75). Judge Ganey remarked (R., p. 56) "let us make it all today * * * we are pretty busy, so we don't want to set it down for any additional oral argument. I take it that the record is complete, is it, by way of testimony?" To which Mr. Woolston replied, without denial by anyone: "Your Honor, *there is no testimony in the record.*" This was confirmed by Mr. Reath, counsel for the Censors (R., p. 62, Brief, p. 10), when he agreed, as follows: "Judge Ganey: Nothing beyond that (i.e., the inadmissible hearsay records of 2 other criminal cases admitted from Phila. Orphans' Court action) is in the record, other than the record made there? Mr. Reath: That is correct."

This kind of thing occurring in our Courts is not, and never was, a valid judgment by a hearing under "due process of law". The right to "advice of the charges", as insisted upon by Mr. Chief Justice Taft for this Court in *Cooke v. U. S.*, 267 U. S. 517, 69 Law Ed. 767, essential to "due process" includes the *right of any accused to demand testimonial proof* of all charges *before* he can be required to exercise any of his other rights to defend, to traverse by exculpation, or to extenuate in mitigation of the alleged offenses.

Germane to item #2, therein stated, it follows that since there never was any testimonial hearing granted to petitioner, Alker, either in the state-court action or in the

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District Court proceeding below, then there had to result, both there and below, *a complete infirmity of proof.* Necessarily this eventuates from the incompetent inadmissibility of the *hearsay records* in the two criminal convictions for alleged tax-frauds, one of which was later vacated and then nolle prossed. The latter occurred after the United States Tax Court, per Murdock, J., at No. 52,266, in *Hurst Est v. C. I. R.,* held: "There is *no deficiency in the estate tax due* from, nor overpayment to, the petitioner." With no tax due there could not be, and could never have been "any defrauding of the United States." Hence Judge Klein's excoriations of Mr. Alker, in his state-court disbarment opinion, 16 Pa. D. & C. 2d 659 (quoted on p. 10 of the Brief below), dated April 17, 1959, were completely nullified by the events (related above) occurring on December 30, 1959, and thereafter. Nevertheless, this is the kind of vacuity in evidence and infirmity of proof upon which both the state-court disbarment, and its consequent Federal disbarment below, have been made to depend. Nullification of responding petitioner's improper conviction in this alleged "Hurst-estate tax fraud" knocked out two of the props on which the state-court disbarment stood, and petitioner ought to have been afforded a hearing not only to show these deficiencies in the state disbarment, but also to prove the mitigations that weakened the other two props, one of which was a mere civil judgment in the *DuBan* case that never should have been used at all as a basis for the disbarment. The sole piling left to sustain the state-court ouster of Mr. Alker is, and was, his conviction for alleged "fraudulent" evasion of personal income taxes. Denial of a full, independent hearing to your petitioner in, and by, the United States District Court, affirmed by the Third Circuit Court of Appeals, at and in which your petitioner could have shown all of the foregoing defects in the state-court disbarment should convince your Honorable Supreme Court that both of the lower Federal courts have not only decided a federal question in a way that is in conflict with

the applicable decisions of this Court, but also that those Courts have *so far departed from the accepted and usual course of judicial proceedings,* and have *so far sanctioned such a departure therefrom* in this case, as *cogently to persuade and imperatively to require* the issuance of a Certiorari to review the ouster decrees below. Even a lawyer, equally with any other accused person, is entitled to the minim of due process of law. *Cooke v. U. S., supra.* The fact that the United States District Court below had no intention whatever of according to this petitioner any kind of valid hearing on these Censors' request for disbarment is definitely indicated by the concluding language of its opinion, dated October 23, 1961 (Brief, p. 19; appendix, p. 14a), as follows:

> "Mr. Alker has furnished no good reason why such evidence as he may now have, justifying a trial de novo in the Orphans' Court, cannot be presented to that Court. *Until such time as the alleged evidence now available to Mr. Alker which was not presented to the state court has been made available to that court,* this court should not grant a trial de novo, which would be equivalent to a collateral attack on the state court proceedings based on evidence not made available to the state court." (Emphasis ours.)

Thus, the United States District Court held, and the Court of Appeals tersely agreed, that unless and until a state-disbarred attorney has returned there and has had himself re-instated in, the state courts, he must be automatically disbarred by our Federal courts. This is not the law of this Honorable Supreme Court in *Selling v. Radford, supra,* nor does it conform in any way with the later views of this Court, unanimously expressed by Mr. Justice Frankfurter, in *Theard v. U. S.,* 354 U. S. 278, 79 S. Ct. R. 1274:

> "Disbarment being the very serious business that it is, *ample opportunity must be afforded to show cause* why

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an accused practitioner should *not* be disbarred. If the accusation rests on disbarment by a state court, *such determination* * * * is *not* conclusively *binding* on the federal courts. * * * The short of it is that *disbarment by a federal court does not automatically flow* from disbarment by state courts." (Emphasis ours.)

The learned Court of Appeals below, while citing and purporting to follow *Selling v. Radford, supra,* also cited *Chernoff's Case,* 344 Pa. 527 (1942), 26 A. 2d 335, as though it were a similar disbarment. Examination of the latter, however, will show that Mr. Chernoff, an attorney, also held the office of Detective for the Philadelphia Coroner, and that he abused the power of that office *to extort bribes from hapless defendants* whose cases Chernoff was assigned to investigate. Since the *extortion of bribery, malum in se,* was a *crime at common law,* the purported analogy implied by the Court of Appeals is *wholly inapposite* to this case.

II. Review by Certiorari Ought to Be Granted Herein to Resolve, by This Supreme Court's Promulgation of an Uniform, Nation-wide Federal Rule Limiting the Rigor of the Discipline Attaching to Convictions for Tax Evasions, the Divergent Views Now Obtaining on Such Federal Disbarments.

It would surely seem to be a matter of universal agreement that the *disbarment* of attorneys, admitted to all our Federal courts, *ought to be governed by a uniform rule applicable on a nation-wide scale* throughout all of our Federal jurisdictions. Yet, such is not the case under the decisions below and other state-court rulings germane to this proposition.

As we have hereinbefore shown, all of the reasons assigned by the state courts of Pennsylvania for your petitioner's disbarment have been nullified or removed by later

developments (which petitioner should have been allowed to prove at a fair hearing under due process), except his conviction for evasion of personal income taxes. The main problem to be resolved, therefore, is whether the conviction of an attorney for evasion of his own liability for his personal federal income taxes is such an offense as warrants his disbarment from practice, as distinguished from suspension therefrom for a stated time.

As to these income tax cases, it is pertinent to note that the civil issue involved here is before the Tax Court of the United States and has not been heard up to the present time, so actually there has been no ascertainment of any taxes actually due by the petitioner for the years involved.

Under the "comity rule", pronounced by this Supreme Court in *Selling v. Radford, supra,* the various Circuits of the United States Courts of Appeals, are not, and cannot possibly be, uniformly agreed on the question. For example, Pennsylvania, New Jersey, and Delaware, in this Third Circuit, in their state tribunals, rigorously enforce a non-existent purity. *Alker Disbarment Case,* 389 Pa. 188 (1960); *In re: Benethum,* (D. C., Del.) 196 Fed. Supp. 541 (1961), and *In re: Isserman,* (N. J.) 345 U. S. 286 (1952). But your Honorable Supreme Court, reversed New Jersey's rigor in the later review of *In re: Isserman,* 348 U. S. 1 (1954). Notwithstanding the irrefutable truth of the human frailties in all of us, the prosecuting Philadelphia Bar Association's Censors insisted below, and will continue to insist here, that "A lawyer is held to an extraordinary high degree of trustworthiness and moral integrity", and "An attorney should, like Caesar's wife, be beyond reproach" (Appellee's Brief, below, pp. 4 and 5). To this, no doubt, we should all aspire, but who among us is so smugly certain that his own moral purity has attained the goal?

By far the better view is that pronounced by Mr. Justice Arterburn, for an unanimous Indiana Supreme Court in *Baker v. Miller,* 236 Ind. 20 (1956), 138 N. E. 2d 145, 59

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A. L. R. 2d 1393. In that case, notwithstanding that an Indiana statute provided: "the admission of an attorney shall be revoked if he is convicted of a felony", and that a violation of Sec. 145(b) of the United States Internal Revenue Code is therein denominated as "a felony", the Indiana Supreme Court, after quoting the definitions of "moral turpitude" from Webster's Intern'l. Dictionary and Black's Law Dictionary (4th Ed.), said:

> "The crucial question, therefore, is whether or not moral turpitude is an essential element of the crime proscribed by Sec. 145(b) of the U. S. Code. In the case of U. S. v. Carrollo, (D. C., 1939), 30 Fed. Supp. 3, the court said: 'We are not prepared to rule that an attempt to evade the payment of a tax due the nation, or the commonwealth, or the city, or the school district, wrong as it is, unlawful as it is, is an act evidencing baseness, vileness, or depravity of moral character. *The number of men who have at some time sought to evade the payment of a tax to some taxing authority is legion.* Any man who does that should be punished civilly or by criminal sentence, *but to say that he is base, or vile, or depraved is to misuse words.*'
>
> "In the case of U. S. v. Scharton, 285 U. S. 518 (1932), 52 S. Ct. 416, 76 L. Ed. 917, the U. S. Supreme Court properly held that 'the offense of violating Sec. 145(b) did not involve fraud' and that the six-year statute of limitations did not apply (only the three-year limit). The Supreme Court noted that some statutes make fraud an essential element, but where it is not an essential averment, *fraud when alleged would be considered surplusage.*"

After discussing numerous other federal cases that decided similar cases in the same vein, Judge Arterburn continued:

> "The foregoing cases establish beyond doubt that *fraud or moral turpitude is not an essential element of the offense* prescribed under Sec. 145(b). Where the federal courts have placed such an interpretation on a federal statute *there is no reason for the state court's giving it a more harsh construction.*" (Citing 3 cases from other states—emphasis ours.)
>
> "This court cannot bring itself to say that a wilful attempt to evade a tax imposed by statute, even if defined as a felony, should automatically disbar an attorney from his profession and strip him of his livelihood in which he has probably spent most of his life. True, an attorney's conduct should be of the highest character, *but the difference between striving for perfection, and the attainment of perfection in conduct is a margin of some width for all of us.*" (Emphasis ours.)

The Indiana Supreme Court thereupon imposed a nine months' suspension. And its reference to our human frailty is both prophetic and refreshing. Under the "Isserman", "Radford", and "Theard" cases in your Honorable Supreme Court, the 7th United States circuit properly followed the state-court example. In like manner, the 9th United States Circuit followed the decision of the Supreme Court of California, In re: *Hallanan,* 43 Cal. 2d 243, 272 Pac. 2d 768, at page 772 where Traynor, J., for an unanimous court, said:

> "If *an attorney* could be summarily disbarred after conviction for a crime, the minimum elements of which do not involve moral turpitude, he *would never have an opportunity to be heard on the issue on which his disbarment depends.*"

That is precisely what has happened in the case at bar to petitioner, Alker. He has been *summarily ousted* from

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the bars of the Federal courts below, *without a hearing,* on the sole basis of an erroneously harsh and unwarranted Pennsylvania state courts' acceptance of inadmissible hearsay, viz., the records of Alker's federal-court criminal convictions for federal tax evasions. *They comprise the only evidence, and were wholly incompetent.*

Harger v. Thomas, 44 Pa. 128;

McInturff v. Ins. Co. N. A., 248 Ill. 92 (1910), 93 N. E. 369;

Marcinkiewicz v. Kutawich, 87 Pa. Super. Ct. 260 (1926); and

Metropolitan S. R. Co. v. Gumby, 99 Fed. Rep. 192 (1900).

Moreover, as herein shown, one of these convictions (in the Hurst Estate) was later vitiated by a new trial, and a nol. pros. after no tax was found due.

Attorneys in the 5th United States Circuit from Louisiana are not disbarred on such tax convictions (merely suspended): *La. St. Bar Assn. v. Steiner,* 204 La. 1073 (1944), 16 So. 2d 843. The same is true of the 6th Circuit, regarding lawyers from Kentucky: *Ky. St. Bar Assn. v. McAfee,* 301 S. W. 2d 899 (1957), and *Ky. St. Bar Assn. v. Brown,* 302 S. W. 2d 834 (1957). Also again from the 7th Circuit, attorneys from Illinois do not suffer disbarment for mere tax evasions: *In re: Teitelbaum,* 13 Ill. 2d 586 (1958), 150 N. E. 2d 873. Likewise in the 8th Circuit, lawyers from Minnesota, Missouri, and Nebraska, for tax convictions, are simply suspended; not disbarred: *In re: Diesen,* 173 Minn. 299 (1928), 217 N. W. 356; *In re: Burrus,* (Mo., 1953), 258 S. W. 2d 625; *State v. Fitzgerald,* 165 Neb. 212, 85 N. W. 323. Suspension is prefered, too, over disbarment, for tax offenses in the 2nd Circuit by lawyers from New York: *In re: Bar Assn. of Nassau County,* 4 App. Div. 2d 273 (1957), 162 N. Y. 2d 752. Again in the 9th Circuit, Oregon joins California, by imposing suspension only, rather than the

fateful rigor of disbarment: *In re: Means,* 298 Pac. 2d 983, and *In re: Johns,* 321 Pac. 2d 281. Of all of the jurisdictions that have considered this question, so momentous to every lawyer, only Colorado, Washington, and the states of the 3rd United States Circuit have insisted upon a complete disbarment of lawyers for tax-evasion convictions. Obviously, all attorneys practicing in our Federal courts ought to be treated alike, and if simple suspension, rather than complete disbarment, is the majority rule, as the preceding cases certainly show, there is a compelling need for the adoption of a uniform, nation-wide rule by this Honorable Supreme Court applicable to all Federal lawyers everywhere. And we respectfully urge that Certiorari ought to be granted in this case for that purpose.

The complaining Bar Association censors, in the courts below, laid great stress upon the practice of law as a privilege, rather than a right. This is true insofar as admission is concerned, but once properly sworn as an attorney, the original privilege by long and honorable usage develops into an occupational right the deprivation of which may ensue only for good cause proved in a hearing under due process of law. This Honorable Court so held in *Ex Parte Garland,* 4 Wall. 333 (1866), 18 Law Ed. 366, wherein, at page 379 of 71 U. S., it was aptly said:

> "The attorney and counselor being, by the solemn judicial act of the Court, clothed with his office, does not hold it as a matter of grace and favor. The *right* which it confers upon him to appear for suitors, and to argue causes, *is something more than a mere indulgence,* revocable at the pleasure of the court, or at the command of the legislature. *It is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency.*"

No laws or court decisions, however stringent, can ever make the idle industrious, the thriftless provident, the

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drunken sober, the lustful modest, the poor rich, the proud humble, the Pharisees tolerant, or the tax-burdened citizens docile and complacent under exorbitantly confiscatory rates. Such traits are innate weaknesses of humanity whose nature often cries aloud: "The Law too frequently permits what honor and justice forbid." The modern needs of every person, including the lawyer, increase the natural penchant of each to retain more of his earned substance, and to part with less, especially to the omnipotent and ubiquitous tax collectors.

It is interesting to note and, which the Petitioner requests this Honorable Court to consider, that

(A) Petitioner's home County Bar Association, the Montgomery County Bar Association, after consideration of his matter arrived at the following recommendation, which was not for disbarment to wit:

"RECOMMENDATION

AND Now, this 26th day of February, 1959, upon consideration of the foregoing case, the Committee of Censors makes the following

RECOMMENDATION

1. That no order of disbarment should be entered in these proceedings against Harry J. Alker, Jr., Esquire, the respondent.

2. In the event the convictions of the respondent, Harry J. Alker, Jr., Esq., become final, either in the case of United States of America v. Harry J. Alker, Jr., Criminal No. 18,750 in the United States District Court for the Eastern District of Pennsylvania or in the case of United States of America v. Harry J. Alker, Jr., No. 18,306, in said court and the respondent suffers imprisonment by reason of the execution of the sentences imposed, that the respondent be suspended as

a member of the Montgomery County Bar for and during the period of his imprisonment.

Respectfully submitted,

COMMITTEE OF CENSORS

/s/ HARRY F. HAUSER, (SEAL)
Harry F. Hauser, Chairman

/s/ WALLACE M. KEELY (SEAL)
Wallace M. Keely

/s/ LEONARD F. MARKEL (SEAL)
Leonard F. Markel"

The above Montgomery County Bar Association Recommendation and action being later voided by the action of the Supreme Court of Pennsylvania order on the appeal from the Philadelphia Orphans' Court from Philadelphia Decree

and

(B) That your petitioner was severely ill during all of this period, hospitalized a substantial part of the time, and as a result thereof, not always able to appear at the various meetings or hearings, nor physically strong and able enough to completely express himself and assist in his defenses.

The Honorable Court's attention is also called to the case of *Alfred B. Cenedella v. Commisioner of Internal Revenue,* 21 T. C. Memo., C. C. H. Dec. 25,373 M, filed, February 28, 1962 in which it discloses that Mr. Cenedella was a practicing attorney as well as district attorney for Worcester County, Massachusetts. That he was indicted for income tax evasion, tried, convicted and sentenced to a total fine of $2,000.00 and four months' imprisonment on each of four counts.

That, however, in spite of such conviction, fine and incarceration, Mr. Cenedella was not disbarred from the practice of law as a result of such proceedings.

(C) Particularly where, in this instant case, the Petitioner Attorney involved herein had been practicing law in the same community for over fifty years and is up in his seventies and, previous to this matter, enjoyed a good reputation and character, and has now been disbarred for over three years in the Pennsylvania State Courts and, since shortly thereafter, has been under suspension to practice in the Federal Courts.

CONCLUSION.

In conclusion, we urge with respectful persuasion that Certiorari should be granted in this case: (1) to afford a fair and full hearing under due process requiring testimonial proofs of the alleged "unfitness" of a lawyer to practice, and (2) to insure the adoption of a uniform rule for the discipline of all Federal attorneys who may run afoul of the U. S. income tax laws.

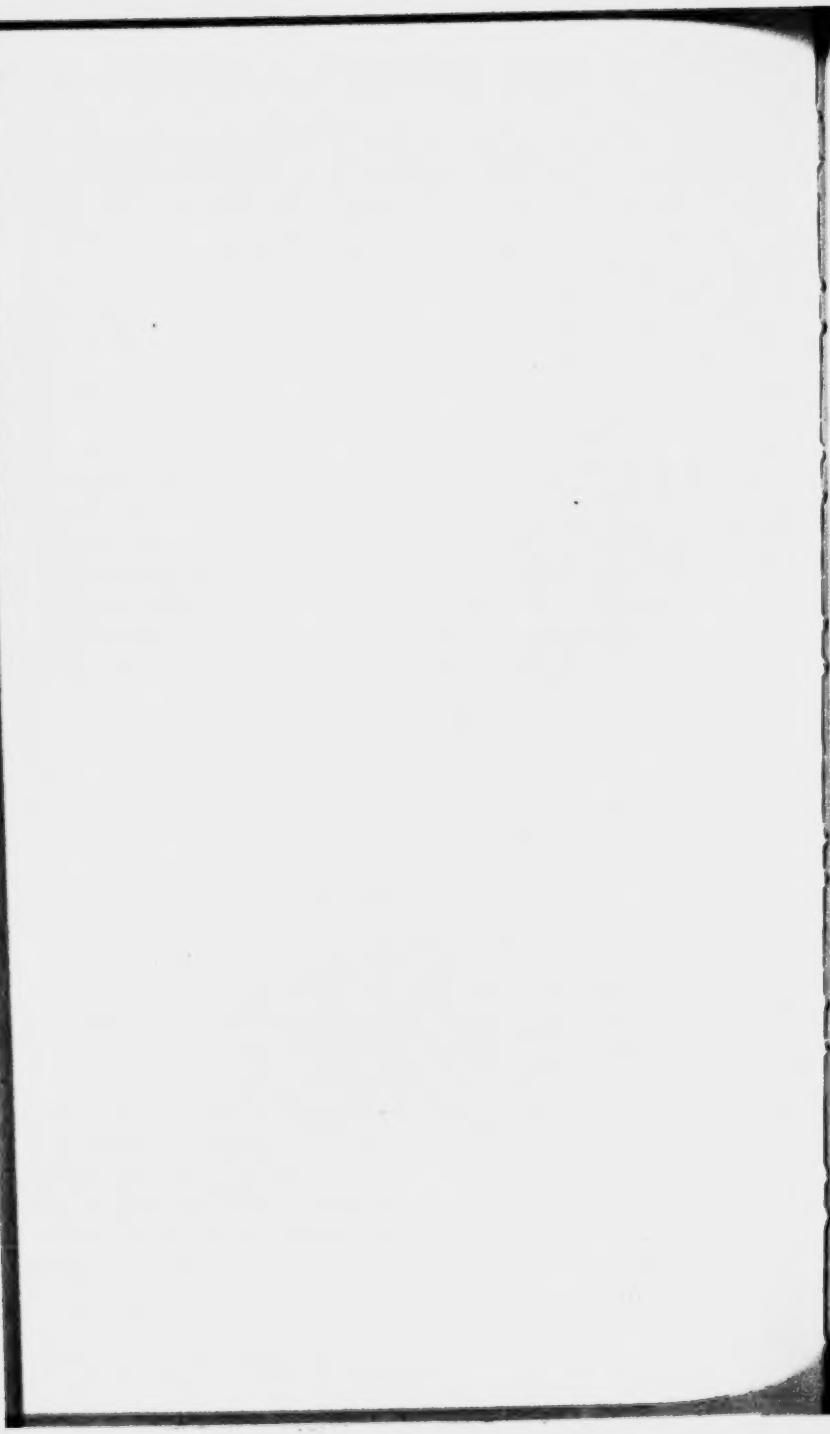
Respectfully submitted,

HARRY J. ALKER, JR.,
Petitioner.

FRANCIS E. WALTER,

ROBERT M. TAYLOR,

JAMES J. REGAN, JR.,
Attorneys for the Petitioner.



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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 13,900

PETITION OF THE COMMITTEE OF CENSORS OF THE PHILADELPHIA BAR ASSOCIATION

IN RE: HARRY J. ALKER, JR.

HARRY J. ALKER, JR., APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA

Filed June 26, 1962

Before McLAUGHLIN, STALEY, and HASTIE, *Circuit Judges*

OPINION OF THE COURT

PER CURIAM.

Appellant was disbarred by the district court upon the record of the proceedings which had resulted in his disbarment by the state court. From its consideration of that record, the district court held that the state court disbarment proceedings were consistent with due process to appellant; that the evidence presented at the state court hearing was sufficient to justify the state disbarment order; that

there was no grave reason why, in the interest of right and justice the district court should not accept the Pennsylvania disbarment proceedings and that consequently "• • • none of the conditions which might erase appellant's status of unworthiness is present."

Appellant was not entitled to a trial de novo in the district court. He had the duty of coming forward with evidence to rebut the state court record. He declined that opportunity. He had a proper and fair hearing in both the state and district court proceedings. Chernoff's Case, 344 Pa. 527, 26 A. 2d 335 (1942); Selling v. Radford, 243 U. S. 46, 51 (1917).

The judgment of the district court will be affirmed.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

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PETITION OF THE COMMITTEE OF CENSORS OF THE PHILADELPHIA BAR ASSOCIATION

IN RE: HARRY J. ALKER, JR.

HARRY J. ALKER, JR., APPELLANT

ORDER SUR PETITION FOR REHEARING.

Present: McLAUGHLIN, STALEY and HASTIE, *Circuit Judges.*

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

By THE COURT:

McLAUGHLIN,
Circuit Judge.

Dated: August 6, 1962.